



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-R04-OAR-2017-0209; FRL-9964-32-Region 4]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants; Plating and Polishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 12, 2016, pursuant to section 112(l) of the Clean Air Act (CAA), the Tennessee Department of Environment and Conservation (TDEC) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Plating and Polishing Operations with respect to the operation of the Ellison Surface Technologies, Inc., facility in Morgan County, Tennessee (Ellison). The Environmental Protection Agency is approving this request, and thus, granting TDEC the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after the EPA has approved the State's alternative requirements.

DATES: This direct final rule is effective [Insert date 60 days after date of publication in the Federal Register] without further notice, unless the EPA receives adverse comment by [Insert date 30 days after date of publication in the Federal Register]. If the EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and

inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0209 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

Copies of all comments must also be sent concurrently to TDEC either via hard copy to Tennessee Department of Environment and Conservation, 312 Rosa L. Parks Avenue, Floor 15, Nashville, Tennessee 37243-1102, attention: Michelle Walker; or via electronic mail to michelle.b.walker@tn.gov.

FOR FURTHER INFORMATION CONTACT: Lee Page, South Air Enforcement and Toxics Section, Air Enforcement and Toxics Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Page can be reached via telephone at (404) 562-9131 and via

electronic mail at page.lee@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 112 of the CAA, EPA promulgates NESHAPs for various categories of air pollution sources. On July 1, 2008, the EPA promulgated the NESHAP for Plating and Polishing Operations (*see* 73 FR 37741) which is codified in 40 CFR part 63, subpart WWWW, “National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.” Ellison performs plating and polishing operations and is subject to subpart WWWW.

Under CAA section 112(l), the EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA’s approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 65 FR 55810, dated September 14, 2000). Under these regulations, a state or local air pollution control agency has the option to request the EPA’s approval to substitute alternative requirements and authorities that take the form of title V permit terms and conditions instead of source category regulations. This option is referred to as the equivalency by permit (EBP) option. To receive the EPA approval of an EBP program, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (*see* 40 CFR 63.94(a) and (b)) is the “up-front approval” of the state EBP program. The second step (*see* 40 CFR 63.94(c) and (d)) is the EPA review and approval of the state alternative section 112 requirements in the form

of pre-draft permit terms and conditions. The third step (*see* 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into a specific title V permit and the title V permit issuance process itself. The final approval of the state alternative requirements that substitute for the Federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the “up-front approval” of the EBP program, is three fold: (1) it ensures that the State meets the criteria of 40 CFR 63.91(d) for up-front approval common to all approval options; (2) it provides a legal foundation for the State to replace the otherwise applicable Federal section 112 requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which the State will be accepting delegation under the EBP option.

On December 12, 2016, TDEC requested delegation of authority to implement and enforce title V permit terms and requirements for Ellison as an alternative to those of subpart WWWW. As part of its request to implement and enforce alternative terms and conditions in place of the otherwise applicable Federal section 112 standard, TDEC submitted information intended to satisfy the requirements necessary for “up front approval” of the EBP program.

II. Analysis of State’s Submittal

The EPA has reviewed TDEC’s submittal and has concluded that the State meets the requirements for “up-front approval” of its EBP program which are specified at 40 CFR 63.94(b) and 63.91(d). The requirements a State or local agency must meet can be summarized as follows: (1) identify the source(s) for which the State seeks authority to implement and enforce alternative requirements; (2) request delegation (or have delegation) for any remaining sources

that are in the same category as the source(s) for which it wishes to establish alternative requirements; (3) identify all existing and future CAA section 112 emission standards for which the State is seeking authority to implement and enforce alternative requirements; (4) demonstrate that the State has an approved CAA title V operating permits program that permits the affected source(s); and (5) demonstrate that the State meets the general approval criteria set forth at 40 CFR 63.91(d). The EPA lists each requirement below and after each requirement explains its reasons for concluding that TDECQ meets the requirement:

A. Identify the Source(s) for Which the State Is Seeking Authority to Implement and Enforce Alternative Requirements

TDEC identified Ellison as the source for which it is seeking authority to implement and enforce alternative requirements.

B. Request or Have Delegation for Any Remaining Sources that Are in the Same Category as the Source(s) for Which the State Seeks to Establish Alternative Requirements

Tennessee has an approved 40 CFR part 63 delegation mechanism commonly described as “automatic delegation” in which formal delegation of the Federal rules occurs without the need for completing specific state rulemaking actions and is automatically completed upon the promulgation date of each part 63 regulation. *See* 61 FR 9661, 9668 (March 11, 1996); 61 FR 39335, 39342 (July 29, 1996); 74 FR 22437, 22438 (May 13, 2009). Therefore, the State has delegated authority to implement and enforce subpart WWWWWW.

C. Identify All Existing and Future Federal Section 112 Rules for Which the State Is Seeking Authority to Implement and Enforce Alternative Requirements

In its submittal, TDEC requested only the authority to implement and enforce State permit requirements for Ellison as alternatives to the Federal requirements applicable to that source under subpart WWWWWW.

D. Demonstrate that the State Has an Approved title V Permits Program and that the Program Permits the Affected Source(s)

The EPA granted final interim approval to Tennessee's CAA title V operating permits program on July 29, 1996 (61 FR 39342) and final approval on November 14, 2001 (66 FR 56996). Under this approved program, TDEC has the authority to issue title V permits to all major and area stationary NESHAP sources. In its submittal, TDEC confirmed that Ellison will obtain a Title V operating permit.

E. General Approval Criteria Found at 40 CFR Section 63.91(d)

The provisions of 40 CFR 63.91(d)(3) specify that "[i]nterim or final title V program approval will satisfy the criteria set forth in § 63.91(d), up-front approval criteria." As discussed above, the EPA has fully approved Tennessee's title V operating permits program.

III. Final Action

The EPA is granting TDEC "up-front" approval of an EBP program under which TDEC may establish and enforce alternative State requirements for Ellison in lieu of those of the NESHAP for Plating and Polishing Operations found at 40 CFR part 63, subpart WWWWWW. TDEC may only establish alternative requirements for Ellison that are at least as stringent as the otherwise applicable Federal requirements. TDEC must, in order to establish alternative requirements for Ellison under its EPA-approved EBP program: (1) submit to the EPA for review pre-draft title V permit terms specifying alternative requirements that meet the criteria of 40 CFR 63.94(d), including the criterion that the alternative requirements are at least as stringent as the otherwise applicable Federal requirements, (2) obtain the EPA's written approval of the alternative pre-draft title V permit requirements, and (3) issue a title V permit for Ellison that contains the approved alternative requirements. Until the EPA has approved the alternative

permit terms and conditions and TDEC has issued a final title V permit incorporating them, Ellison will remain subject to the Federal NESHAP requirements found at 40 CFR part 63, subpart WWWWWW.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, the EPA is publishing a separate document that will serve as the proposal to approve TDEC's request to implement and enforce alternative requirements in the form of title V permit terms and conditions should adverse comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866 gives the Office of Management and Budget (OMB) the authority to review regulatory actions that are categorized as "significant" under section 3(f) of Executive

Order 12866. This action is not a “significant regulatory action” and was therefore not submitted to OMB for review. This action provides “up-front” approval of an EBP program under which TDEC may establish and enforce alternative requirements for one facility in the State that are at least as stringent as the otherwise applicable Federal requirements.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). A “collection of information” under the PRA means “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.” Because this action applies to only one facility, the PRA does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may

certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule will not have a significant impact on a substantial number of small entities because it only affects one facility and because approvals under 40 CFR 63.94 do not create any new requirements but simply allow the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule does not contain an unfunded mandate of \$100 million or more as described in UMRA and does not significantly or uniquely affect small governments. This action allows the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements, and imposes no new requirements.

E. Executive Order 13132: Federalism

Executive Order 13132, *Federalism* requires the EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action allows the State to establish and enforce

alternative requirements that are at least as stringent as the otherwise applicable Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This action does not have tribal implications as specified in Executive Order 13175 because it will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it allows the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs the EPA to consider and use “voluntary consensus standards” in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 because it allows the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major

rule” as defined by 5 U.S.C. 804(2).

IV. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, air pollution control, National Emission Standards for Hazardous Air Pollutants, hazardous air pollutants

Dated: June 14, 2017.

V. Anne Heard

Acting Regional Administrator

Region 4

40 CFR part 63 is amended as follows:

PART 63—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 63 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart E—Approval of State Program and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(43) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(43) *Tennessee*. (i) The Tennessee Department of Environment and Conservation (TDEC) has “up-front” approval to implement an Equivalency by Permit (EBP) program under which TDEC may establish and enforce alternative requirements for the Ellison Surface Technologies, Inc. facility located in Morgan County, Tennessee (Ellison) in lieu of those of the National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Plating and Polishing Operations at 40 CFR part 63, subpart WWWW, “National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.” TDEC may only establish alternative requirements for Ellison that are at least as stringent as the otherwise applicable Federal requirements. TDEC must, in order to establish alternative requirements for Ellison under its EPA-approved EBP program: submit to the EPA for review pre-draft title V permit terms specifying alternative requirements that meet the criteria of 40 CFR 63.94(d), including the

criterion that the alternative requirements are at least as stringent as the otherwise applicable Federal requirements; obtain the EPA's written approval of the alternative pre-draft title V permit requirements; and issue a title V permit for Ellison that contains the approved alternative requirements. Until the EPA has approved the alternative permit terms and conditions and TDEC has issued a final title V permit incorporating them, Ellison will remain subject to the Federal NESHAP requirements found at 40 CFR part 63, subpart WWWWWW.

(ii) Reserved.

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